IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1752 of 1987
With
CIVIL APPLICATION No. 6245 of 2002
In
FIRST APPEAL No. 1752 of 1987

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

RH TRIPATHI - Appellant(s)
Versus
NIRANJANSINGJI SAJJANSING & 1 - Defendant(s)

==========

Appearance :
MR SANDIP C SHAH for Appellant(s) : 1,
Respondent No.2 is deleted
None for the respondent No.2 though served.

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/05/2007

ORAL JUDGMENT

1. Mr.Sandip C.Shah, learned counsel for the appellant. Respondent No.1 has been deleted vide Court's conditional order dtd.19/10/1988. None for the respondent No.2, though served.

2. From the records it would appear that the respondent No.1 namely Niranjansing Sajjansing was driver-cum-owner of the offending vehicle, but he could not be served and as no appropriate steps were taken by the appellant, this Court vide its order dtd.19/10/1988 directed that if appropriate steps are not taken right in time, the name of respondent No.1 shall stand deleted. Unfortunately, appropriate steps were not taken, therefore, the name of the respondent No.1 namely Niranjansing Sajjansing stood deleted.

3. Mr.Shah, learned counsel for the appellant submits that because of some lapses on the part of the appellant or his counsel, the name of the respondent No.1 stood deleted, therefore, the appellant be allowed to join the respondent No.1 and serve him at his correct address.

4. In the opinion of this Court, a person can be joined as party respondent, if the Court finds that his presence is necessary for disposal of the matter or in absence of such a person, an effective order cannot be made and that there was *bonafide* lapses. Even in such cases,

where the appellate court finds that a particular person is required to be joined as party, then, he would become a party to the proceedings from the date of his joinder and not from the date of institution of the proceedings. If I allow the prayer to join the respondent No.1 namely Niranjansing Sajjansing today, then, his joinder would be from today and not from the date he was deleted as party respondent. In case where a particular person is deemed to be joined on a particular date, then, the appeal would be taken to have been filed on the date when such person is joined. If I allow the respondent No.1 namely Niranjansing Sajjansing to be joined today, then, his joinder would be effective from today and the law would hold that the appeal has been filed against him today only. If that be so, the appeal would be barred by limitation by at least 20 years.

5. In absence of driver-cum-owner - respondent No.1 namely Niranjansing Sajjansing, this Court cannot proceed with the matter. If by lapse on the part of the appellant, he has missed the bus or an opportunity to get an order in his favour, then, this Court, but for expressing a sympathy, cannot help such appellant.

6. Present appeal, because of deletion of driver-cum-owner - respondent No.1 herein, namely Niranjansing Sajjansing, has become infructuous. It deserves to and is accordingly dismissed. No costs.

7. Consequently, Civil Application No.6245 of 2002 is also dismissed with no order as to costs.

(R.S. GARG, J.)

rafik